

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAY TYLER and AMANDA TYLER,

Plaintiffs,

vs.

BANK OF AMERICA N.A.,

Defendant.

CV-13-67-DWM-RKS

**FINDINGS AND
RECOMMENDATIONS TO
DISMISS CASE WITHOUT
PREJUDICE**

Plaintiffs filed a motion to proceed in forma pauperis and a 107-page complaint on Oct. 28, 2013. An Order required Plaintiffs to amend their complaint so that it is a “short and plain statement” of their claim, as required by Rule 8 of the Federal Rules of Civil Procedure. The Order explained that complaints filed in forma pauperis must be screened before they are served on the defendant to ensure they include cognizable claims, and that a fair screening depends on the complaint clearly and accurately stating the basis of the lawsuit. Plaintiffs were instructed that they must not include affidavits, articles purporting to discuss law, case decisions, or any other material except for a plain-language

statement of what they believe the Defendant or Defendants did wrong. Doc. 5.

Plaintiffs responded by filing a 108-page Amended Complaint. The Amended Complaint consists of conclusory legal statements, followed by 106 pages of affidavits, articles, cases, and other materials. The Amended Complaint does not state a claim and is subject to dismissal. Doc. 6. Dismissal with prejudice would be appropriate for Plaintiffs' defiance of the previous Order.

In deference to their pro se status, Plaintiffs were provided another opportunity to amend the Complaint in an Order issued December 3, 2013. Doc. 7. The Order provided that on or before December 31, 2013, Plaintiffs could file simple statement of the facts that they believe show that each defendant did something wrong, but if they failed to file an appropriate Amended Complaint the case will be recommended for dismissal. Plaintiffs have not filed an Amended Complaint or any other pleading or motion.

The court **FINDS:**

1. Plaintiffs Complaint, doc. 2, and Amended Complaint, doc. 6, fail to satisfy the requirements of Federal Rule of Civil Procedure 8, which requires a "short and plain statement of the claim."

The court **RECOMMENDS:**

1. The case should be dismissed without prejudice for the reasons set forth in the previous Orders, docs. 5 and 6.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION

AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Findings and Recommendations within fourteen (14) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may waive a de novo determination by the district judge.

Dated the 16th day of May, 2014.


Keith Strong
United States Magistrate Judge